IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 499 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARJI P KATARIA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 499 of 1990

MS SONAL SHAH for MR YN OZA for Petitioner No. 1-16

MR ND GOHIL, AGP, for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 06/09/2004

ORAL JUDGEMENT

In the present petition, the petitioners have prayed for issuance of mandamus quashing and setting aside the order dated 21.1.89, by which the petitioner

No.1 was informed that the select list prepared in July 1986 for the post of armed police constable is cancelled. It is further prayed that the respondents be directed to appoint the petitioners who are in select list for the post of armed police constables.

2. It is the case of the petitioners that pursuant to the selection process carried out by the respondents for the post of Armed Police Constables, the petitioners were selected and their names were placed in the select list prepared in the year 1986. It is their case that they could not be appointed though vacancies existed only because there was a ban imposed by the State Government on fresh recruitment. It is further stated by the petitioners that though in the year 1989, ban was lifted, the respondents did not appoint the petitioners only on the ground that the select list was not extended beyond the period of one year.

3. The respondents have filed affidavit in reply wherein it is stated that pursuant to the selection process and interview, respondent No 1 had selected candidates for appointment to the posts of Armed Police Constables and accordingly, a select list was prepared in July 1986. It is further pointed out that while preparing the select list, the respondent No.1 had considered the then existing vacancies and vacancies which were likely to arise in the following year in the cadre of Armed Police Constables. It is further pointed out that a waiting list was also prepared for the reason that in case the selected candidates do not come forward to accept the appointment, such waiting list can be operated. Accordingly, respondent No.1 had prepared a list of persons which exceeded the actual number of vacancies existing and anticipated in the next year. It is contended that the petitioners whose names were in the waiting list would not get any right for being appointed. In the affidavit, it is further pointed out that pursuant to the select list prepared, respondent No.1 had appointed 95 candidates in the cadre of Armed Constables and there was only one vacancy remaining in June 1987. It is also pointed out that when the ban was imposed, there were no vacancies to be filled from the select list. It is also contended that waiting list would have a life of one year. A resolution dated 5th June 1982 is also produced on record in which it is clearly stated that the select list would be in operation for a period of one year or till the new select list is prepared whichever is earlier. On the basis of the above affidavit, the respondents have resisted the petition.

4. Appearing for the petitioners, learned advocate Ms.Sonal Shah has submitted that the action of the respondents in not appointing the petitioners is illegal. She has placed reliance on a Division Bench decision of this High Court decided on 7th July 1990 in Letters Patent Appeal No.435-A of 1988 wherein it is observed that though the Court cannot issue mandamus to make appointments, since the respondent No.1 Authority did not even consider the case of the petitioners for appointment as the list was required to be cancelled by arbitrary and unlawful instructions by the respondent No.2 necessary directions should be given to consider the petitioners for appointment.

5. Learned advocate for the petitioner has also relied on a decision in the case of Dilipbhai Kuberdas Patel v. Vice-Chancellor, 1992(1) G.L.H. (U.J.) 11 wherein though the petitioner was selected for appointment, he could not be appointed because of stay order granted by the Court and in the meantime, the select list had expired due to efflux of time, the Court directed that appointment be made considering the fact that vacancy was still available. Learned advocate for the petitioner has also placed reliance on a decision in the case of Popatbhai R. Moghariya v. District Judge, 1993 (2) GLH 635 wherein the Court found that the petitioners were found eligible and placed in the select list and persons junior to the petitioners in the select list were appointed, but the petitioners were denied appointment on the ground that the petitioners had become over-aged, the High Court allowed the petition and directed appointment of the petitioners.

6. Appearing for the respondents, learned AGP Shri N.D.Gohil has submitted that by virtue of the fact that the names of the petitioners were placed in the waiting list, the petitioners would get no right to be appointed to the post.

7. By now the law on the right of a person placed in the waiting list is well-settled. The Hon'ble Supreme Court in a decision in the case of Government of Orissa v. Haraprasad Das, AIR 1998 SC 375, observed that even in case where the person is placed in the select list, the Government taking policy decision not to fill up the post, in such a case also, the Court cannot direct the Government to make appointment and mere empanelment or inclusion of one's name in the select list does not give him any right to be appointed. In a decision reported in AIR 1994 SC 736 (State of Bihar v. Secretariat Asstt.. S.E. Union 1986), the Hon'ble Supreme Court has held

that candidates selected and empanelled do not acquire indefeasible right to be appointed. In a decision reported in AIR 2001 SC 1851 (All India SC & ST Employees Assn. v. A. Arthur Jeen), it is held that candidates included in the panel indicating their provisional selection do not acquire any indefeasible right for appointment even against existing vacancies and the State is under no legal duty to fill up all or any of vacancies.

8. The learned advocate for the respondent has also placed reliance on a decision reported in 2002 (4) SCC 726 wherein the Hon'ble Supreme Court has held that there are only two restrictions on the appointing authorities, namely, that the appointment must be made in accordance with the reservation rules, if any, and the panel of selected candidates cannot be scrapped during the period of its validity except for well founded reasons. It is further observed in the said decision that there was ban on regular appointment under the Act which came to an end in the year 2000 and the period of validity of the 1995 rank list had long since expired and that, therefore, no directions can be given for appointment from the said list.

9. In the facts of the present case, I find that the petitioners were placed not even in the select list, but their names were found in the waiting list. As stated in the affidavit-in-reply, which is more or less uncontroverted, appointments to the available vacancies were already made from the select list. There was, therefore, no question of operating the waiting list. It is not the case of the petitioners that persons who are offered employment from the select list did not come forward to accept the same and therefore such vacancies should have been filled in by the petitioners. When the select list is operated for making appointments to the existing vacancies and the vacancies have been exhausted and no further vacancies are available, persons in the waiting list cannot make a grievance that their appointments are not made, more so when the life of the waiting list was for a period of of maximum one year and admittedly the same had expired long before the ban was lifted. Even in absence of a ban for recruitment, the respondents could not have operated the waiting list in question to make appointments towards future vacancies and on that count also, the claim of the petitioners could not have been accepted.

10. For the above reasons, I find no infirmity in the action of the respondents and the petitioners have not

made out any case for issuance of writ of mandamus. In the result, the petition fails and is hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)
(vjn)